



October 23, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government Section
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2000-4114

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140509.

The Comptroller of Public Accounts (the "comptroller") received a written request for all documents contained in the rule file maintained by the Tax Policy Division for Sales Tax Rule 3.295. You indicate that some of the requested information will be made available to the requestor. You contend, however, that the remaining requested information is excepted from required public disclosure pursuant to sections 552.101, 552.107(1), and 552.111 of the Government Code.¹ You have submitted to this office for review a representative sample of the requested documents.²

You contend that some of the information at issue is made confidential under section 111.006(a)(2) of the Tax Code and, therefore, must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either

¹Although you did not raise section 552.101 within the statutorily required ten business days following the comptroller's receipt of the records request, *see* Gov't Code § 552.301(b), a demonstration that information is excepted from disclosure under this exception constitutes a "compelling demonstration" that the information may be withheld. Open Records Decision No. 150 (1977). Accordingly, we will consider your section 552.101 claims.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

constitutional, statutory, or by judicial decision.” Section 111.006(a)(2) of the Tax Code provides that information “secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer’s books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer” is confidential.

Although this office has determined that “private letter rulings” and administrative hearing decisions must be released to the public with the identity of the taxpayer redacted, all supporting documents or other information provided to the comptroller by or on behalf of the taxpayer must be withheld from the public pursuant to section 111.006(a)(2) of the Tax Code. After reviewing the information at issue, we agree that much of the information contained in the records at issue is made confidential under section 111.006(a)(2). We have marked the information that the comptroller must withhold pursuant to section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code.³

You also contend that one of the documents at issue is excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy. Section 552.101 protects information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

You contend that an individual’s electric bill from the City of Austin is protected by common law privacy. We note, however, that information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest; thus, the doctrine of common law privacy does not generally protect from required public disclosure information regarding such a transaction. *See* Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). Because you have raised no other exception to disclosure for this record, we conclude that the comptroller must release the electric bill to the requestor.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice or opinion and client confidences. *Id.* After reviewing the information you submitted to this office, we agree that many of the documents at issue, or portions thereof, constitute attorney-client privileged communications and thus come within the protection of section 552.107(1). We have marked the documents accordingly.

You contend that some of the memoranda at issue are excepted from public disclosure pursuant to section 552.111 of the Government Code, which excepts from required public

³Because we resolve this aspect of your request under section 111.006, we need not address the applicability of section 151.027 of the Tax Code to the records at issue.

disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. After reviewing the memoranda at issue, we agree that some of the information may be withheld pursuant to section 552.111 of the Government Code. We have marked the documents accordingly.

Additionally, the draft of a document that has been released or is intended for release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, and may therefore be withheld under section 552.111 of the Government Code. See Open Records Decision No. 559 (1990). Assuming the draft documents for which you claim section 552.111 have been released to the public in their final form, we agree that the comptroller may withhold the draft documents in their entirety.

In summary, the comptroller must withhold pursuant to section 111.006(a)(2) of the Tax Code the identity of taxpayers contained in “private letter rulings” and administrative hearing decisions. The comptroller must also withhold all supporting documents or other information provided to the comptroller by or on behalf of the taxpayer. Additionally, we have marked the information that the comptroller may withhold pursuant to sections 552.107(1) and 552.111 of the Government Code. All remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/RWP/ljp

Ref: ID# 140509

Encl. Submitted documents

cc: Ms. Eleanor H. Kim
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(w/o enclosures)